

BEFORE ~~OFFICIAL~~ ILLINOIS COMMERCE COMMISSION

I.C.C. DOCKET NO. AI ~~Docket No. 01-0539~~
Exhibit No. 1.20
Witness Panfil
Date 8/13/02 Reporter S

Rebuttal Testimony of Eric Panfil
On Behalf of Ameritech Illinois

Ameritech Illinois Exhibit 1.20

July 16, 2002

**REBUTTAL TESTIMONY OF
ERIC PANFIL**

INTRODUCTION

Q. Please state your name and business address.

**A. My name is Eric L. Panfil. My business address is 225 W. Randolph St,
Chicago, Illinois 60606.**

Q. By whom are you employed and in what capacity?

**A. I am employed by Illinois Bell Telephone Company as Director - Network
Technology and New Services in the Illinois Regulatory organization.**

**Q. Are you the same Eric L. Panfil who previously filed direct testimony
on behalf of Ameritech Illinois in this proceeding?**

A. Yes, I am.

Q. What is the purpose of your rebuttal testimony?

**A. The purpose of my rebuttal testimony is to respond to the recommendations made
by other parties in their direct testimony. I will discuss the overall purpose of the
Part 731 rule, application of the rule to Competitive Local Exchange Carriers**

30 ("CLECs"), other parties' attempts to justify the addition of intrastate and
31 interstate special access services in the rule. Staff and other parties' supplemental
32 direct testimony regarding Staff's proposed section 731.900, other miscellaneous
33 objections to the testimony of other parties, and areas where I agree with the
34 comments of other parties and recommend parallel changes to Ameritech Illinois'
35 proposed rule. Rebuttal testimony is also being filed by two other witnesses on
36 behalf of Ameritech Illinois. James Ehr addresses specific issues regarding the
37 Company's existing Performance Remedy Plan and other related standard and
38 measurement issues. Richard Dobson addresses the allegations of some parties
39 regarding the quality of certain special access services and describes the processes
40 and procedures that are already in place to ensure that service quality remains
41 high.

42
43 **Overall Position of Ameritech Illinois**

44
45 **Q. Overall, is there anything in the testimony of other parties that would cause**
46 **you to change the fundamental positions expressed in your direct testimony**
47 **regarding the Part 731 rule proposed by Staff in its direct testimony?**
48

49 **A. No. ~~It is still Ameritech Illinois' belief that Staff's proposed rule is inconsistent~~**
50 **~~with the statutory scope and intent of Section 13-712(g). With respect to "carrier~~**
51 **~~to carrier wholesale service quality rules", Ameritech Illinois believes that the~~**
52 **~~statute requires and contemplates a set of basic wholesale service quality~~**
53 **~~requirements that apply on a nondiscriminatory and competitively neutral basis to~~**
54 **~~all local exchange carriers in the state of Illinois that provide one or more of the~~**

there should be

55 ~~covered services or functions to another carrier. Therefore, the services that~~
56 ~~should be included in the final rule are those that are fundamental to the process~~
57 ~~of all local exchange carriers inter-operating in a competitive environment in a~~
58 ~~manner that supports all carriers' ability to meet the basic retail service quality~~
59 ~~requirements set forth in both sections 13-712 and 13-902 (in particular, 13-~~
60 ~~902(c)(3)) of the PUA. The Ameritech Illinois proposed rule attached to my~~
61 ~~direct testimony, with the few minor changes recommended below based on the~~
62 ~~comments of other parties, remains the proper implementation of the intent of~~
63 ~~Section 13-712(g).~~
64

65 Application Of Wholesale Service Quality Standards To CLECs

66
67 **Q. Do some parties object even to the limited potential in Staff's proposed rule**
68 **that wholesale service quality standards might someday be applied to the**
69 **wholesale service provided by CLECs?**
70

71 **A.** Mr. Cox (MTSI and TDS Joint Exhibit 1.0, pages 4-9) and Ms. Furbish
72 (WorldCom Ex. 1.0, pages 15-17) propose that the procedures for how the "Level
73 2" standards would be determined to be applicable to CLECs should be changed
74 to make it much more difficult for the standards to be applied. They both propose
75 to do away with the "bona fide request" process and limit applicability of the rules
76 to only those CLECs that have obligations under Section 251(c) of the federal
77 Telecommunications Act of 1996 ("TA96").
78

79 Q. Are these requested exemptions justified?
80

81 A. No. On the contrary, as I stated in my direct testimony, even the limited
82 exemption for CLECs provided for in Staff's proposed rule ~~is contrary to the~~
83 ~~requirements of the PUA and~~ will negatively impact the quality of retail services
84 provided to end users in Illinois. The wholesale service quality rules, like the Part
85 730 and Part 732 retail service quality rules, should apply to any carrier that
86 provides the covered services under the jurisdiction of the Illinois Commerce
87 Commission.

88

89 In fact, the Part 732 retail service quality rule already imposes certain wholesale
90 service quality obligations on CLECs. For example, if another carrier were
91 purchasing basic local service from a CLEC and reselling that service to a retail
92 end user, the CLEC would be obligated under section 732.35 ~~(which implements~~
93 ~~section 13-712(c)(4) of the PUA)~~ to reimburse the retail carrier if it caused the
94 retail carrier to miss a retail standard and pay a credit to its retail customer.

95

96 Q. Do CLECs currently provide some of the wholesale services for which service
97 quality standards are proposed for "Level 2" carriers in Staff's proposed
98 rule?
99

100 A. Yes. As Ms. Spieckerman discussed in her direct testimony, CLECs currently
101 provide Customer Service Records ("CSRs"), and also provide number porting
102 and unbundled loop return, which Ameritech Illinois has recommended be added
103 to the list of covered services in the rule. It is also possible that CLECs may

104 provide resold local services and loss notifications to other carriers. Although
105 Ameritech Illinois currently has no arrangements with CLECs that would include
106 those services, I believe they would be applicable if one CLEC were to purchase
107 basic local services (at retail rates) from another CLEC for resale to end users as a
108 retail service.

109

110 **Q. Do either Mr. Cox or Ms. Furbish directly address the obligation to provide**
111 **CSRs, or respond to Staff's position (Jackson Direct, pages 5-7) that**
112 **unbundled loop return should be included in the rule as a wholesale service?**
113

114 **A. No.**

115

116 **Q. Ms. Furbish of WorldCom claims (at p 17 of her direct testimony) that**
117 **CLECs cannot be expected to have systems in place to handle the covered**
118 **services proposed for "Level 2" carriers. Do you agree?**
119

120 **A. As Ms. Spieckerman's testimony shows, numerous CLECs already provide loop**
121 **returns, number porting, and CSRs on a consistent basis. These are all basic,**
122 **fundamental functions of the carrier-to-carrier relationship for local services. It is**
123 **absolutely reasonable that the Commission should not only expect, but demand,**
124 **that all LECs implement these fundamental carrier-to-carrier functions in a**
125 **quality manner.**

126

127

128 **Special Access**

129

130 **Q. Do any parties support and expand upon the proposal to require**
131 **performance measures for special access services provided by "Level 1"**
132 **carriers that was included in Staff's proposed rule?**
133

134 **A.** Two parties, the Wireless Coalition and WorldCom, specifically support Staff's
135 proposal to apply special access performance measures to "Level 1" carriers, and
136 propose varying standards and remedies which they recommend be added to the
137 Part 731 rule to be approved by the Commission.

138

139 **Q. Why do these carriers claim the proposed performance measures are**
140 **necessary?**
141

142 **A.** WorldCom (Furbish direct, pages 3-14) implies that ILEC special access services
143 in Illinois are lacking in quality, but cites no specifics. The witnesses testifying
144 on behalf of the Wireless Coalition (Wireless Coalition Ex. 1.0, 2.0, 5.0, 6.0, and
145 7.0) make some specific claims regarding the provision and performance of
146 special access services which Ameritech Illinois believes to be highly inaccurate,
147 as detailed in the rebuttal testimony of Richard Dobson. In addition, the numbers
148 presented by the Wireless Coalition focus only on a single specific niche
149 application (among many) within a single type (among many) of special access
150 service -- DS1 circuits that connect cell sites to wireless carriers' switches. The
151 Wireless Coalition does not specifically address any other type of special access
152 service, nor any other of the many applications or types of DS1 special access
153 services.

154

155 Q. What support do the Wireless Coalition and WorldCom provide for their
156 proposed standards?
157

158 A. They provide no support whatsoever as to whether those standards are reasonable.
159 or achievable by any and all providers of special access services, nor do they
160 indicate whether any provider (either ILEC or CLEC) currently meets those
161 standards. They are simply the "wish list" of each party.

162

163 The Wireless Coalition's testimony focuses entirely on a single type of circuit:
164 DS1 connecting wireless switch to cell site (and does so with highly suspect data,
165 as Mr. Dobson shows). That is hardly a basis on which to make rules impacting a
166 broad array of circuits used for countless applications.

167

168 Q. Has the Commission ever had retail service quality standards for private line
169 or special access services?
170

171 A. No.

172

173 Q. What guidance does the PUA provide ⁷~~regarding the way that service quality~~
174 ~~and infrastructure deployment decisions should be made for special access~~
175 ~~and other types of telecommunications service in Illinois?~~
176

177 A. The basic policy is set forth in Section 13-103, and states in part:

178

179 Sec. 13-103. Policy. Consistent with its findings, the General
180 Assembly declares that it is the policy of the State of Illinois that:

181

182

* * * * *

183
184 (b) consistent with the protection of consumers of
185 telecommunications services and the furtherance of other public interest
186 goals, competition in all telecommunications service markets should be
187 pursued as a substitute for regulation in determining the variety, quality
188 and price of telecommunications services and that the economic burdens
189 of regulation should be reduced to the extent possible consistent with the
190 furtherance of market competition and protection of the public interest;
191

192 As I stated in my direct testimony, special access services have been classified as
193 competitive in Illinois for a number of years. The Wireless Coalition and
194 WorldCom are proposing to substitute their own arbitrary standards and goals for
195 the efficient allocation of resources in a competitive marketplace ~~that is~~
196 ~~recognized and encouraged by the PUA.~~ As Mr. Dobson testifies, Ameritech
197 Illinois has responded decisively to dissatisfaction expressed by special access
198 customers in the past, and has procedures and policies in place designed to ensure
199 that we continue to do so in the future. The competitive environment for special
200 access services demands that we do so.

201
202 **Q. Would the imposition of special access performance measures under the Part**
203 **731 rule create problems for existing special access services and customers?**
204

205 **A.** Absolutely. As Mr. Dobson discusses, Ameritech Illinois already has numerous
206 arrangements in place with its special access customers to provide extensive and
207 ongoing service level information and to make adjustments to customers' bills
208 when specified service levels are not achieved. It would be time-consuming,
209 expensive, and disruptive to dismantle existing measurements designed for
210 specific customers and groups in order to replace them with whatever measures

211 might be mandated under the Part 731 rule. In addition, any standards established
212 here would run the risk of creating a conflict with results of FCC NPRM
213 regarding special access performance measures (which I discussed in my direct
214 testimony). ~~The existence of this risk demonstrates the fact that any action taken~~
215 ~~in this docket to impose performance measures, with or without remedies, on~~
216 ~~interstate special access services, inevitably runs afoul of the FCC's jurisdiction~~
217 ~~over those services.~~ Since the inception of access services and tariffs, the
218 Commission has wisely pursued a policy that "mirrors" the rules, regulations, and
219 rate structures of federal access tariffs in the state jurisdiction. The
220 ~~preponderance of such services in the interstate jurisdiction and~~ ^Tthe need for
221 efficiency and consistency in the provision of access services makes that policy a
222 wise one, and one that the Commission should pointedly continue by rejecting
223 other parties' requests for the inclusion of special access performance measures in
224 the Part 731 rule.

225

226 **Q. WorldCom (Furbish direct, pages 17-18) recommends changes to the**
227 **definition of special access. What is your reaction to the proposed change?**
228

229 **A.** First, of course, we believe the definition is unnecessary in that special access
230 should not be included in the Part 731 rule at all. Also, I would note that the
231 changes proposed amount to an expansion of the definition, which also
232 demonstrates just a taste of the breadth and complexity of special access services,
233 which I pointed out in my direct testimony, and the complete failure of the
234 proponents of special access performance measures to address that complexity.

235 Finally, I question the addition of "broadband services" to the definition. It is not
236 clear what that phrase is intended to include, and the regulatory status and
237 definition of broadband services seems to be very much in question at this time.

238

239 **Miscellaneous Issues**

240

241 **Q. On page 6 of her testimony, Ms. Moore of AT&T claims that an exclusion for**
242 **emergency situations should not be allowed on measures that have a parity**
243 **standard rather than a benchmark standard. Do you agree?**
244

245 **A.** No. Ms. Moore claims that the exclusion is unnecessary because the emergency
246 situation will impact equally both the wholesale service being measured and the
247 retail service to which it is being compared. That is not likely to be the case in the
248 real world. An emergency situation, such as flooding or a lightning strike, can
249 occur in a relatively concentrated area and could impact the wholesale carrier
250 differently from each retail carrier (each of which could be impacted differently
251 from one another), by sheer luck. For example, a storm may have a more
252 significant impact in an area in which there are more AT&T lines than Ameritech
253 Illinois lines, or a disaster could occur at a time on a day in which AT&T is
254 submitting more orders than Ameritech Illinois (such as during an AT&T
255 promotion). The point is not which scenario is most likely. The point is that Ms.
256 Moore is trying to assume now that all natural disasters will always affect all
257 carriers in exactly the same way, so she suggests that the proposed rule can ignore
258 such occurrences. Our proposal is that we wait until a disaster occurs, exclude the
259 data appropriately, and see what the impact really was. The only way to truly

260 compare "apples to apples" is to have the same exclusions (including emergency
261 situations) apply to both halves of a parity standard in the same manner, and then
262 let the real world data decide the issue.

263

264 **Q. On page 4 of her testimony, Ms. Moore of AT&T characterizes Docket**
265 **01-0120 as a proceeding to determine "what permanent remedy plan should**
266 **be adopted for Ameritech in Illinois." Do you agree with that**
267 **characterization?**
268

269 **A.** No. Ameritech Illinois does not agree with that characterization, and Ms. Moore
270 herself acknowledges that there is a disputed issue as to the term of the merger
271 condition that established the plan at issue in Docket No. 01-0120. In fact, the
272 portions of the proposed Part 731 rule that say a "preexisting plan" includes plans
273 that have expired have no purpose if the pre-existing plan is "permanent" as Ms.
274 Moore suggests. See section 731.105 (definition of "preexisting plan") and
275 section 731.230(b), to which Ameritech Illinois objects (see pages 12-13 of my
276 direct testimony). At any rate, the Commission has just entered an order in docket
277 No. 01-0120, and the parties can discuss the legal impact of that order here, if
278 any, in their briefs.
279

280 **Addition of Proposed Section 731.900**

281

282 **Q. Staff attempts to portray "the manner and procedure by which a service is**
283 **terminated" (McClerren Supplemental Direct, page 2) as a service quality**
284 **issue. Do you agree?**
285

286 **A.** No. As I discussed in my supplemental direct testimony, there are no parallel
287 regulations in the retail service quality rules (Parts 730 and 732), the credit and
288 collections policies established by the Commission for retail telecommunications
289 services are contained in Part 735, and this separation of service quality from
290 credit and collections rules is also reflected in the Commission's rules for electric
291 and gas utilities (as well as water and sanitary sewer utilities). It is not a service
292 quality issue, and the attempt to treat it as one leads to the undesirable (and
293 perhaps unintended) results I described in my supplemental direct testimony.

294

295 **Q. Do you concur with Verizon's proposal (Raynor Supplemental Direct, pages**
296 **1-2) to have the provisions of 731.900 be applicable only in the absence of**
297 **other terms and conditions specified in an interconnection agreement**
298 **between carriers?**
299

300 **A.** While it would be a step in the right direction, that proposed change would not
301 adequately address all of the problems with the proposed section 731.900. First, it
302 does not address situations where carriers (such as Ameritech Illinois) have
303 existing approved tariffs that include differing provisions. Moreover, the
304 existence of section 731.900 would improperly overshadow future negotiation of
305 interconnection agreements and would ultimately supplant any negotiated
306 provisions. The addition suggested by Verizon simply does not cure the basic

307 problem, which is that the proposed section 731.900 targets the wrong party in
308 attempting to remedy a problem with the performance of retail carriers by
309 imposing new rules on wholesale carriers.

310

311 **Q. What about the situation cited by Mr. Maldazis at pages 4-7 of his testimony**
312 **on behalf of Focal Communications?**
313

314 **A.** Even accepting at face value Mr. Maldazis's description of the circumstances, I
315 fail to see how the proposed rule is likely to prevent a similar situation. A carrier
316 that is willing to ignore the terms of its agreement in threatening disconnection is
317 not likely to give much more deference to the proposed rule, and could (for
318 example) argue that the rule cannot pre-empt a valid agreement that was
319 previously approved by the Commission.

320

321 Thus, regarding Focal's proposal to increase the notice period from 35 to 40 days,
322 the example cited provides no support for such a change. A superfluous "notice"
323 of either 35 or 40 days is entirely unnecessary in the vast number of real-world
324 cases where it is simply a cut-and-dried matter of a customer being disconnected
325 for non-payment, where the terms of service are clear and the customer knows full
326 well that the bills have not been paid.

327

328 Q. On pages 8-10 of his direct testimony Mr. Meldazis discusses Focal's
329 interpretation of Section 13-406 of the PUA and its relationship to the
330 proposed section 731.900. Does Ameritech Illinois agree with Focal's
331 interpretation?
332

333 A. ~~I am not an attorney and, therefore, I am not offering any legal opinions~~
334 ~~regarding this statutory provision. Rather, I will only be describing Ameritech~~
335 ~~Illinois' understanding of the statutory purpose and intent of the provision.~~ With
336 ~~that caveat in mind,~~ Ameritech Illinois believes that a service is being
337 discontinued or abandoned ~~(as used in Section 13-406)~~ when a carrier ceases
338 providing that service to all customers in a given geographic area (which may of
339 course be "the whole world" if the carrier is ceasing operations entirely). When a
340 carrier disconnects services provided to a single customer because that customer
341 has not paid the charges for the service, the service is not being either
342 "discontinued" or "abandoned" – the carrier continues to offer the service to
343 paying customers (including a new customer that may subsequently occupy the
344 same premises formerly occupied by the customer whose service was terminated
345 for non-payment). The notice requirements for truly discontinued and abandoned
346 service in Section 13-406 make sense because the customer has no other way to
347 find out that service is going to be discontinued in a situation where the customer
348 has no fault. But in a non-payment situation, the customer knows better, and
349 sooner, than the carrier providing the service that it will be disconnected for non-
350 payment, because the customer knows whether or not it has paid, or will be able
351 to pay, the charges for the service in question. Ameritech Illinois would not
352 object to section 731.900 if it was clearly limited to only situations where the

353 service is being discontinued or abandoned by a carrier, as described above, and
354 was clearly not applicable to situations where service is being terminated to an
355 individual customer due to non-payment of the charges for that service.

356

357 **Q. Would the proposed section 731.900 lead to improved services or notices for**
358 **retail end users?**
359

360 **A.** I don't believe so. As I discussed in my supplemental direct testimony, the only
361 likely practical effects of Staff's proposed Section 731.900 would be the receipt
362 by Staff and the Commission of large volumes of notices of potential service
363 disconnections, and to increase the losses due to uncollectibles of the ILECs, with
364 no discernable improvement in services or notices provided to end users.

365

366 **Additional Recommended Changes to the Proposed Rule.**

367

368 **Q. Did other parties recommend changes to the proposed rule with which you**
369 **concur?**
370

371 **A.** Yes. AT&T (Moore direct at page 7) and CTC-Illinois (Mason direct at pages
372 24-26) recommend that the performance measures for Level 2 carriers should not
373 impose a 100% compliance standard, but should include a benchmark of 95% or
374 90% above which service quality is considered to be adequate. I recommend that
375 the Commission adopt the benchmarks proposed by CTC-Illinois, which are
376 consistent with the corresponding retail benchmarks in both the current and
377 pending versions of the Part 730 rule. The 95% standard for provisioning
378 measures proposed by AT&T would set a higher standard for wholesale service

379 than is required for the corresponding retail service, and would be plainly
380 discriminatory. CTC-Illinois also points out (Mason at page 24) that the Part 732
381 rule (section 732.35) provides "recourse" payments to retail carriers for credits
382 they pay to end users that are caused by wholesale carriers' service, and the
383 proposed rule should be modified to ensure that any remedy payments under the
384 Part 731 rule are net of any recourse payments for the same category of
385 measurement (installation or repair) under the Part 732 rule, in order to avoid
386 "double jeopardy" for the same service quality miss.

387

388 **Q. Does this conclude your rebuttal testimony?**
389

390 **A. Yes.**